

To: Sussman, Bob[Sussman.Bob@epa.gov]; O'Hara, James[O'Hara.James@epa.gov]; Rivas-Vazquez, Victoria[Rivas-Vazquez.Victoria@epa.gov]; Johnson, Alisha[Johnson.Alisha@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]
From: Bloomgren, David
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Range proposed cooperation on EPA fracking study

Mike Soraghan, E&E reporter

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Range Resources Corp. proposed cooperation with U.S. EPA's national hydraulic fracturing study last year as it negotiated a settlement of drilling pollution charges in Texas, according to emails between attorneys for the company and the agency.

EPA dropped the case less than two months later, after the agency's top enforcement officials repeatedly conferred about "Range access conditions." Four days after the withdrawal, Range CEO Jeff Ventura publicly committed to cooperate with the study, although the company and the agency are still negotiating liability details.

But Range officials dismiss any suggestion of a link between withdrawal and the study as a "conspiracy theory."

"It wasn't our idea, and we were not the first to bring it up," Range spokesman Matt Pitzarella said yesterday. "What is important is that in the end, when the EPA had the full spectrum of science and facts, they fully withdrew their order."

The study was urged on EPA by members of the House Appropriations Committee in 2009. The agency released a progress report in December 2012, and the final report is expected in 2014.

As part of the study, EPA wants to do before-and-after testing of groundwater around drilling and fracking sites. But to do that, the agency had to get cooperation from companies in an industry suspicious of EPA and hostile to federal regulation.

Aside from Range, only one other company, Chesapeake Energy Corp., has agreed to participate in that aspect of the study.

Dallas-based EPA regional officials brought the high-profile Safe Drinking Water Act case against Range in December 2010. In an emergency order, the agency alleged that Range's Barnett Shale gas wells were leaking methane gas into two homes in the Silverado subdivision in Parker County, west of Fort Worth.

Range officials deny the accusations. They say groundwater in the area had methane in it before Range's gas wells were drilled.

The Range case was one of the agency's first high-profile enforcement actions against a company drilling for gas in a shale formation using high-volume hydraulic fracturing and horizontal drilling. It came to be seen as part of EPA's effort to assert itself in the nation's drilling boom.

EPA has never confirmed or rejected the company's assertion that the case was dropped because Washington officials realized that the regional officials' facts and science were flawed. Instead, the agency developed talking points carefully sidestepping such questions as it prepared for the March 2012 withdrawal.

Around the same time, EPA pulled back in two other high-profile drilling pollution cases in Pavillion, Wyo., and Dimock, Pa. (*EnergyWire*, April 2, 2012).

EPA's inspector general is currently examining both the decision to bring the case and the circumstances surrounding its dismissal.

EPA spokeswoman Alisha Johnson said in a response to *EnergyWire* yesterday that the agency dropped the Range case "based on a careful review of several legal and policy considerations." She said EPA encouraged Range to participate in the study "at the time and subsequently."

Settlement talks

EPA and Range officials both say that discussions about using Range operations in Washington County, Pa., southwest of Pittsburgh, for the fracturing study had started long before the dismissal of the Texas contamination case. Johnson said Range agreed to participate "early in the study planning process."

At the time, they were separate issues. But Range officials told EPA that although they wanted to join in the study, they wouldn't do so voluntarily while an arm of the agency was pursuing the company in federal court, Pitzarella said.

In early 2012, EPA sent Range proposed terms, which did not mention the national study.

Range's outside attorney, John Riley in the Austin office of the Bracewell & Giuliani law firm, responded by email Feb. 7, rejecting EPA's proposed terms.

He also attached a proposal titled "Range Term Sheet -- for settlement purposes only."

The top item was full dismissal of the agency's enforcement action. Item No. 4 proposed that the company would cooperate with the national study by providing EPA researchers with access to Range drilling sites.

The Range proposal said the company "will enter into an MOU with EPA setting forth the mutual agreement of the parties with regard to providing EPA with access to Range controlled sites for the purpose of conducting the congressionally mandated study of hydraulic fracturing."

An MOU, or memorandum of understanding, is a written agreement between the agency and another entity, usually without enforcement provisions.

It was the first mention of Range participating in the national study in any of the emails obtained by *EnergyWire* through a Freedom of Information Act request.

The case was settled along terms similar to those proposed by Riley, with full dismissal of the case and participation in the study.

Pitzarella said Range's proposal included the fracturing study provisions because EPA had continued to ask the company to participate.

"Throughout our discussions, the EPA continued to mention the study and their desire to partner with us on it," Pitzarella said, "which is why it was on the term sheet."

The Associated Press previously reported the link between the withdrawal of the case and the national study (*EnergyWire*, Feb. 12). Riley's email proposal on behalf of Range has not been previously reported.

'Every conspiracy theory needs a premise'

At EPA, the effort to resolve the case picked up speed a month later, after a March 5 meeting between then-Administrator Lisa Jackson and Ignacia Moreno, the Obama administration's top environmental enforcement official at the Justice Department.

Three days later, Jackson met with EPA enforcement chief Cynthia Giles, and the settlement talks kicked into high gear. Giles called a Range attorney and left a message saying "that we want to get this back on track and to make a serious attempt to see if we can resolve the matter quickly." It was understood at that point that EPA would drop the case.

The following week, Jackson's senior policy counsel, Bob Sussman, emailed Range Chief Operating Officer Ray Walker to "touch base" about the discussions and the study, which is being conducted by EPA's Office of Research and Development, or ORD.

"One item on the term sheet that caught my attention is the MOU on conditions of access for the ORD fracking study," Sussman wrote in a March 14, 2012, [email](#). "I've asked our lawyers to find out from your lawyers what conditions you have in mind. We need to discuss them fully before we reach any agreement so there's no misunderstanding later on."

And in the final three days before the case was dropped on March 31, 2012, Giles, her deputy Steven Chester and Bernadette Rappold, director of EPA's Special Litigation and Projects Division, exchanged a series of emails under the subject line "access conditions."

"I took a crack at editing the Range access conditions following the discussion with Range this afternoon," Rappold wrote in one of the [messages](#). But the substance of those conditions was redacted by EPA officials.

Four days after EPA's emergency order was withdrawn, Ventura, Range's CEO, wrote a public letter to Jackson that highlighted his company's new willingness to participate in the study.

"With the matter of the emergency order resolved, Range is now able to cooperate with the agency in providing access to study sites as part of the EPA's hydraulic fracturing study," Ventura wrote in the April 4, 2012, letter still posted on the company's website. As a measure of their interest, Giles and other officials got a draft of the letter to review the night before it was sent.

But Range's top in-house attorney, David Poole, says it's wrong to say that cooperation in the study was exchanged for dropping the accusations.

"As EPA well knows, there was no 'secret' deal that caused EPA to terminate its action -- there was only sound science and good judgment," Poole wrote in a recent letter to EPA. "But every conspiracy theory needs a premise and this instance is no different."

To read the emails cited above, click [here](#), [here](#), [here](#), [here](#), [here](#) and [here](#).

For complete coverage of Range Resources, including FOIA documents, click [here](#).

David E. Bloomgren
U.S. Environmental Protection Agency
Direct: 202.564.0639
Mobile: 202.604.5926